IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 784 of 2000
in
SPECIAL CIVIL APPLICATION No 8010 of 2000
with
LETTERS PATENT APPEAL No 790 of 2000
with
CIVIL APPLICATION No 12343 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSFC

Versus

MCM HOTELS PVT LTD

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L.P.A. No. 784 of 2000

MR RD DAVE with MR HS MUNSHAW for Appellants
MR AMAR P DAVE for Respondents No. 1 & 2
MR BHARAT T RAO for Respondents No.3 & 4
MR AJ PATEL for Respondent No. 5

L.P.A. 790 of 2000:

MR AJ PATEL for Appellant
MR AMAR P DAVE for Respondents No. 1 & 2
MR RAJESH DAVE for Respondents No. 3 & 4
MR BT RAO for Respondents No. 5 to 7

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CORAM : MR.JUSTICE B.C.PATEL

and

MR.JUSTICE JAYANT PATEL

Date of decision: 30/01/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. When we started dictating the judgment, Mr. Amar Dave, learned advocate insisted that the Court should accommodate his client so that the amount can be paid. It was known to the learned advocate that his client made a statement before the Court earlier that he shall bring draft of Rs. 1.5 crores. But he failed and thereafter the Court proceeded with the matter. After the hearing was concluded, the Court could not proceed with the judgment because the next two days were assigned for admission only. Yesterday the matter could not be taken up and today, learned advocate is requesting the Court that again the Court should adjourn the matter and should give some time and the Court should inquire from his party to find out his genuineness. The learned advocate should know that on several occasions in past, time was granted. The Committee granted permission to participate in the auction. But he has failed everywhere. In our opinion, when the Court is proceeding with the matter, interruption is caused by making a show that the original petitioner is willing to make payment and today, he is not willing to pay draft of Rs. 1.5 crores and therefore, request of the learned advocate Mr. Dave is rejected.

#. Gujarat State Finance Corporation (hereinafter to be referred to as "GSFC") has preferred Letters Patent Appeal No. 784 of 2000 while M/s. Hotel Satyaketu has preferred Letters Patent Appeal No. 790 of 2000 against the judgment delivered by the learned Single Judge in Special Civil Application No. 8010 of 2000 on 18.10.2000.

#. The GSFC is incorporated under the provisions of the State Financial Corporation Act, 1951. The GSFC is assisting industries by granting financial aids and is assisting various entrepreneurs who are interested to establish their industries in the State of Gujarat. It is required to be noted that the amount of loan comes from the other Corporations and the same is disbursed to the industries. As and when installments are paid, the same is again redistributed to other needy entrepreneurs and therefore, if the installments are not paid, it would be difficult for the State Financial Corporation to

render assistance to other entrepreneurs and consequently, that will have effect not only on the industries but on the persons who are likely to be employed and would result into loss to the public at large as a consequence of the amount not paid to the GSFC. That will also result into shortage of funds for providing loans to other needy industrial entrepreneurs and would also lead to unemployment. Therefore, it is the duty of every entrepreneur who has taken loan from such Corporations to carry on business with efficiency so as to see that the industries are productive and payments are made in time to the Corporation.

#. M/s. MCM Hotels Private Limited (hereinafter to be referred to as " the petitioner") approached the GSFC for availing financial assistance to settle its hotel industry at Baroda. An application was submitted for financial assistance along with necessary documents. Upon scrutiny of the application and documents on 27.3.87, the GSFC sanctioned term loan of Rs. 30.00 lakhs for the project of the petitioner on various terms and conditions. Respondent nos. 1 and 2 in the appeal preferred by the GSFC executed, signed and delivered various security documents on 24.7.87 such as loan agreement, deed of hypothecation of plant & machineries etc., memorandum of entry creating equitable mortgage on immovable properties. The petitioner was required to repay the loan of Rs. 36.00 lakhs together with interest at the rate of 16% per annum within a period of 8 years by 25 quarterly instalments with moratorium period of 24 months. As such, the final instalment was to be made on 1.5.1995. It appears that the petitioner again approached the GSFC with an application for further finance and further finance was provided by the GSFC in the sum of Rs. 15.75 lakhs vide sanction letter dated 21.3.90 for which necessary documents were executed by the petitioner. The petitioner availed loan of Rs. 14.06 lakhs only. The last date of repayment of additional loan was 1.5.1996.

#. It appears that the Gujarat Industrial Investment Corporation (hereinafter to be referred to as "GIIC") also disbursed loan of Rs. 41.75 lakhs along with GSFC. The petitioner executed memorandum of entry recording joint equitable mortgage in favour of GSFC and GIIC both by a single document dated 24.7.87. GSFC was also acting as agent on behalf of the GIIC. It is required tobe noted that Bank of Maharashtra also sanctioned term loan, cash credit and other facilities to the tune of Rs. 89.80 lakhs and disbursed the amount from time to time. Initially, loan of Rs. 55.44 lakhs was sanctioned and disbursed in the year 1988 for which necessary documents

were signed, executed and delivered by the petitioner and memorandum of entry recording extension of joint equitable mortgage by the petitioner in favour of the Bank of Maharashtra dated 5.7.88 was also delivered. It is the say of the GSFC that thereby pari pasu charge of the Bank of Maharashtra was also created along with GSFC and GIIC for due repayment and discharge of the said advances.

#. It appears that the petitioner expressed his inability to repay the amount of loan which was taken and GSFC granted Reschedulement/Rephasement/Rehabilitation from time to time to the petitioner. Indulgence granted in favour of the petitioner can be enumerated as under.

"(i) On 26.7.1990 accrued overdue instalments of principal amount which were not paid came to be deferred and rephasement of outstanding loan was granted.

(ii) On 26.7.1990, accrued overdue interest not paid was funded and instalments thereof were granted.

(iii) On 2.7.1993 following benefits were granted:

(a) Penal interest upto 31.3.1993 of Rs.3.60 lacs were waived by GSFC,

(b) Interest on existing term loan of Rs. 38.22 lacs upto 31.3.1993 was funded to be paid by 10 years by 40 quarterly instalments from 1.5.1995 to 1.2.2005 with zero percent interest upto 30.6.1998 and thereafter from 1.7.1998 to 1.2.2005 at 10% simple interest.

(c) The overdue instalments of existing term loan amounting to Rs. 25.09 lacs was rescheduled to be paid within 7 years by 28 quarterly instalments from 1.5.1995 to 1.2.2000 with 10% simple rate of interest.

(d) Instalment of existing term loan yet to be accrued to Rs. 24.97 lacs to be paid within 10 years by 40 quarterly instalments from 1.5.1995 to 1.2.2005 with interest at the rate of 15.5% charge

upto 1.5.1995 and at the rate of 17.5% thereafter. The last date of repayment was extended from 1.5.1995 (original) to 1.2.2005 (revised), i.e. extended by 9.75 years."

As the petitioner miserably failed and neglected to repay the dues of the GSFC and GIIC despite the most liberal instalments, benefits and concessions were granted. The petitioner once again approached the GSFC for reschedulement and ultimately the petitioner agreed for one time settlement. It appears that the State Financial Corporation was so liberal that it granted even one time settlement. The following benefits were granted under the said one time settlement.

"(a) On 3.4.1996, GIIC granted one time settlement only for Rs. 79.29 lacs in respect of their dues only on certain terms and conditions.

(b) On 21.8.1996 GSFC also followed the same pattern of one time settlement with GIIC and granted one time settlement for Rs. 93.00 lacs of GSFC dues only. But the petitioner failed to make payment to GSFC and GIIC both as per above one time settlement.

(c) On 2.4.1997 again GSFC and GIIC both granted one time settlement at the request of the petitioner for an amount of Rs. 123 lacs by sacrificing substantial amount, i.e. actual outstanding dues. (GSFC share of Rs. 56.57 lacs and GIIC's share of Rs. 66.43 lacs).

The petitioner also failed to pay the aforesaid amount as per one time settlement. Therefore, one time settlement stood automatically cancelled as per the condition.

(d) On 29.5.1998, at the request of the petitioner, GSFC and GIIC both extended the benefit of one time settlement upto September 1999, on condition that, the petitioner was required to make the payment of an amount Rs. 23.93 lacs on/or before 30.6.1998 and remaining

> installments as stipulated therein. However, the petitioner failed to pay Rs. 23.93 lacs within time. Therefore, as per the condition the said one time settlement was automatically terminated. Over and above the same, the petitioner was also informed by letter dated 17.7.1998 by GSFC about cancellation of one time settlement."

It is required to be noted that despite the leniency granted as aforesaid, the petitioner did not care to carry out the promise given to the GSFC and once again approached the GSFC and requested to extend one time settlement. It appears that there was intra-institutional meeting of GSFC, GIIC and the Bank of Maharashtra on 16.11.98. With a view to see that the petitioner can run his hotel, all the three institutions extended one time settlement upto 28.2.99 on certain terms and conditions which were specifically agreed by the petitioner in writing and specific undertaking was also given to abide by the terms and conditions. The petitioner knowing full well that the financial institutions are very liberal, did not keep his promise to repay the amount of loan as per the one time settlement and it is only because of that the said settlement stood cancelled.

#. It is required to be noted that till March, 1998, the total amount due and payable by the petitioner was to the tune of Rs. 723.28 lacs. Break up thereof is as under.

GSFC 99.86 lacs
GIIC 94.38 lacs
Bank of Maharashtra 529.04 lacs

It is also required to be noted at this stage that the petitioner, to show his bonafides, gave cheques and the same were dishonoured. Before calling upon the petitioner by issuing notices etc. the petitioner assured that he is making payment by way of three cheques, details whereof are as under.

Rs. 10,50,000/= dishonoured on 5.9.97.
Rs. 20,12,500/= dishonoured on 21.5.99.
Rs. 32,20,000/= dishonoured on 15.8.99.

#. It is in view of this poor show made by the petitioner, the GSFC was constrained to take action in the matter. Had the petitioner paid the amount, possibly, the GSFC would not have taken action because

GSFC was equally interested in recovery of money and paying amount to others. The petitioner was granted more than sufficient leniency and yet, he failed and neglected to pay off the due amount and therefore, on 12.3.97, possession of the premises of the petitioner was taken over by the GSFC. It appears that thereafter the petitioner made payment of Rs. 12.50 lacs and on his agreeing to pay the remaining amount, possession of the Hotel was handed over back. Again on 16.8.97, GSFC was constrained to take possession of the unit of the petitioner as defaults were committed. Undertaking was given by the petitioner that the dues will be cleared latest by 30th August, 1997 and on 17.8.97, possession was given back. However, the petitioner failed and neglected to make the payment as agreed. On 31.3.99, again possession was taken over and was given back on 7.4.99 on furnishing an undertaking that the dues will be cleared by 30th June, 1999. For assurance, the petitioner gave post dated cheques, figures of which we have indicated earlier. The said cheques were dishonoured. Therefore, again on 19.6.99, GSFC and GIIC again took over possession and initiated recovery proceedings by publishing advertisement in the newspaper.

#. Thereafter the petitioner filed Special Civil Application No. 8003/99 before this Court against the financial institutions. It is required to be noted that the petition was rejected by the Court. It is required to be noted that the learned Single Judge while rejecting the petition held that as and when auction is held, the petitioner will have an opportunity to give his bid. The learned Single Judge also held that there is no question of restoration of possession.

##. It appears that thereafter on 26.6.2000, GSFC published an advertisement for auction of the property in question. On 27.6.2000, opportunity was given to the petitioner to resolve the disputes amicably by negotiations, but the petitioner failed to avail of the said opportunity. Ultimately, on 10.7.2000, auction was held and the highest offer which was received was of Rs. 4.5 crores from one M/s. Oasis Hotels Pvt. Ltd. It is also required to be noted that the petitioner was permitted to participate in the bid. But he did not submit any offer at any point of time. The petitioner made a representation which is clear from the record produced before us. The said representation is at Annexure : G to the petition. The petitioner came out with the version that he has reached the final stage of discussion and negotiations with one prospective investor and the dues will be cleared off within a short time. It

was further stated that initially down payment of minimum 10% will be paid before 30th July, 2000 and there is firm commitment to pay off the balance of 90% dues in the next 10 to 12 weeks' time as per the schedule of payment discussed and preferred by the investor. It is required to be noted that in the letter, there is no reference to the name of the party. If the party was really interested, the way in which it is indicated, the party would have paid the same amount. It appears to us that with a view to stall the auction, the petitioner approached the GSFC with such letter. We say so because even when we took up the matter earlier for hearing, the petitioner appeared before us and categorically made a statement that one Mr. More is ready to buy the hotel for Rs. 5.00 crores. The petitioner also stated before us that he is ready and willing to settle the matter for which he has filed an affidavit. The petitioner further stated before us that before 10 days the said Mr. More said that for the entire deal he shall pay Rs. 5.00 crores subject to the clearance of title. On 11.1.2000 the petitioner stated before us that he shall deposit Rs. 1.5 crores within a period of 10 days. This indulgence was granted only with a view to test his bonafides and if that amount would have been given, the Court would have taken a different view. Today also, the learned advocate appearing for the original petitioner stated that some buyer is there but without any bank draft of Rs. 1.5 crores. Thus, sufficient time was given to the petitioner, but the petitioner failed to make any arrangement. It appears that this is being done only with a view to see that GSFC could be compelled to bow down as per his terms and conditions. If the Court permits such petitioners to stall the cases without money, we are afraid GSFC will find itself in difficulty in advancing loans and there will be no buyer for the property in question.

##. In the instant case, the buyer paid money to the tune of Rs. 1.57 crores as agreed with GSFC and spent about Rs.60.00 lacs for repairs. It is required to be noted that the total amount of offer is Rs. 4.51 crores. The petitioner approached the Court only with a view to see that new buyer may not carry on business and may walk out and the petitioner may enter again in the field very easily with stern attitude. It is in this background, the present appeals are required to be considered.

##. Learned advocate Mr. Amar Dave, for the original petitioner contended that the unit is likely to fetch more price and at a cheaper rate the property was auctioned as a result of which, the petitioner will have

to face financial burden and therefore, the Court should interfere. He further submitted that there is glaring illegality in the procedure followed by the GSFC while auctioning the property. According to him, the offer of Rs. 4.51 crores was not made by Hotel Satyaketu but by Hotel Oasis and therefore, by back-door entry, the hotel of the present petitioner cannot be given to the Hotel Satyaketu. Learned advocate for the original petitioner submitted with strong emphasis that this Court by following the decision of the Apex Court in the case of Mahesh Chandra v. Regional Manager, U.P. Financial Corporation and others [AIR 1993 SC 935] wherein guidelines have been indicated should direct the GSFC to cancel the auction.

##. It is required to be noted that by delaying payment, interest is being added at every quarter. It is also required to be noted that on account of the property being not used since long, there will be loss to the property. It is known that if the property (like hotel building) remains unused for long period, huge amount is required for putting it to use. It is required to be noted that if the hotel starts working, there will be employment atleast to 130 persons (the petitioner has stated that 130 persons were working in the hotel). Therefore, the anxiety must be to see that the balance is struck and no undue advantage is taken by either party. So far as the case of Mahesh Chandra (supra) is concerned, the Apex Court pointed out the following guidelines.

"(1) Sale of a unit should always be made by public auction.

(2) Valuation of a unit for purposes of determining adequacy of offer or for determining if bid offered was adequate, should always be intimated to the unit holder to enable him to file objection if any as he is vitally interested in getting the maximum price.

(3) If tenders are invited then the highest price on which tender is to be accepted must be intimated to the unit holder.

(4)(a) If unit holder is willing to offer the sale price, as the tenderer, then he should be offered same facility and unit should be transferred to him. And the arrears remaining thereafter should be rescheduled to be recovered in

instalments with interest after the payment of last instalment fixed under the agreement entered into as a result of tendered amount.

(b) If he brings third parties with higher offer it would be tested and may be accepted.

(5) Sale by private negotiation should be permitted only in very large concerns where investment runs in very huge amount for which ordinary buyer may not be available or the industry itself may be of such nature that by normal buyers may not be available. But before taking such steps there should be advertisements not only in daily newspapers but business magazines and papers.

(6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale proceeds shall be deposited in loan account."

##. The Apex Court in the case of U.P. Financial Corporation v. M/s. Gem Cap (India) Pvt. Ltd. [AIR 1993 SC 1435] considered Section 29 of the State Financial Corporations Act. The Apex Court in the said judgment pointed out as under.

"The Corporation is not like an ordinary money-lender or a Bank which lends money. It is a lender with a purpose the purpose being promoting the small and medium industries. At the same time, it is necessary to keep certain basic facts in view. The relationship between the Corporation and the borrower is that of creditor and debtor. The corporation is not supposed to give loans once and go out of business. It has also to recover them so that it can give fresh loans to others. The Corporation no doubt has to act within the four corners of the Act and in furtherance of the object underlying the Act. But this factor cannot be carried to the extent of obligating the Corporation to revive and resurrect every sick industry irrespective of the cost involved. Promoting industrialisation at the cost of public funds does not serve the public interest; it merely amounts to transferring public money to

private account. The fairness required of the Corporation cannot be carried to the extent of disabling it from recovering what is due to it. While not insisting upon the borrower to honour the commitments undertaken by him, the Corporation alone cannot be shackled hand and foot in the name of fairness. Fairness is not a one way street, more particularly in matters like the present one."

We would like to point out that fairness is shown by the GSFC not once but on three occasions details of which we have referred earlier. Despite the cheques were bounced, the Corporation handed over possession back. We have indicated earlier about the reschedulement of payment etc. thereafter one time settlement, thereafter again change in the one time settlement. It is clear that much leniency was shown by the GSFC, but in the instant case, it appears that the petitioner is of the view that this is not only one way street, but with restricted entry where except him none can enter. We are afraid that in the facts and circumstances of the present case, if any lenient view is taken, ultimately, the public purpose will suffer. It will be loss to the public exchequer as the amount comes from the public at large. In the aforesaid judgment in the case of U.P. Financial Corporation (supra) the Apex Court considered the decision of the Apex Court in the case of Mahesh Chandra (supra) in para 13 and pointed out as under.

" On behalf of the appellant reliance has been placed upon the decision of this court in Mahesh Chandra v. Regional Manager, U.P. Financial Corporation & Ors., (1992) 2 J.T. 326. We have perused the decision. That was a case where the debtor was anxious to pay off the debt and had been taking several steps to discharge his obligation. On the facts of that particular 'case it was found that the corporation was acting reasonably. In that context certain observations were made. The decision also deals with the procedure to be adopted by the Corporation while selling the units taken over under Section 29. That aspect is not relevant in this case. We are, therefore, of the opinion that the said decision is of no help to the appellant herein."

##. In the instant case, it is required to be noted that there is a sale of a unit by a public auction. On 7.7.2000, the government approved valuer and Engineer

M/s. Hitesh Shah & Associates submitted valuation report of the property in question amounting to Rs. 3,67,58,991/= and thus after obtaining the valuation report of the unit, the matter proceeded further. The offer accepted of the highest offerer is at Rs. 4.50 crores and therefore, cannot be said to be unfair.

##. In view of the order made by the learned Single Judge earlier which we have indicated, the petitioner was permitted to bid and he did remain present and it was made known to him that the highest bidder is M/s. Hotel Oasis. It may be noted that despite the Court permitted him to participate, he chose not to participate in the bid. In view of the letter, which we have referred to earlier at Annexure : G, if he had a bidder or if he had any other buyer, a prudent person would think it fit to remain present so that one could participate in the bid. But having not done so, he cannot make a grievance that the GSFC is not acting fairly. At this juncture, it would be worthwhile to note that the petitioner has tried to create a ghost of one M/s. Nishith Financial Services by stating that the offer of Nishith Financial Services was higher (Rs. 4.65 crores), yet the same was not accepted. It is required to be noted that in view of this fact, we called upon the GSFC to place before us the original record and the GSFC accordingly produced the record. The letter dated 7th July, 2000 is a handwritten letter of Nishith Financial Services in which no amount is mentioned but it merely states that for purchasing the said property, it was ready to pay reasonable amount in one stroke. This letter is written on behalf of its client M/s. Victor Lodha who had not made any offer. It is required to be noted that this letter was perused by the officer of GSFC and he has specifically observed in the letter itself as under.

> "They have not participated for tender process. This looks to be designed to destroy the process. If he is interested, he should have deposited which he has not done. This is violation of procedure."

Thereafter the said Nishant Financial Services had submitted letter with offer of Rs. 4.65 crores on behalf of its client but the Committee could not consider since it neither deposited any money nor did it participate in bid.

It is interesting to note that as per the conditions, persons who were submitting their tenders were required to deposit the amount as indicated in the tender and

having not done so, the petitioner cannot raise grievance that the Committee, in violation of the principles laid down by the Apex Court has accepted the offer of M/s. Hotel Oasis.

##. It is required to be noted that on behalf of the petitioner, it was also argued that GSFC has committed serious error in giving the hotel of the petitioner to Hotel Satyaketu though the offerer was M/s. Hotel Oasis. The petitioner is concerned with getting himself relieved. However, as the learned advocate raised this point, we examined the material. On 21st July, 2000, the GSFC addressed a letter to Oasis Hotel in view of the highest bid submitted by it. Letter is at Annexure II at page 123 with affidavit filed by one V.P. Patel, Proprietor of Hotel Satyaketu - original respondent no. 6. In that letter, the GSFC has indicated the terms and conditions over and above the conditions stated in Annexure : I attached therewith. We are not referring other conditions, but so far as the change of name is concerned, we find it in Clause 4(ii) which reads as under.

> "(ii) Change in name, constitution etc., shall be approved before execution of interim documents."

Thus, before the documents were to be executed, this change was required to be indicated and if approved, the same was to be accepted. From the original papers which we have called for, it is very clear that Shri V.P. Patel is the same person who was representing Hotel Oasis as well as Hotel Satyaketu and when GSFC has granted permission of change in the name, the petitioner cannot have any objection and therefore, we find no discrepancy in this behalf. Therefore, the said argument is required to be rejected. Condition No. 4 in para 22 in the judgment in the case of Mahesh Chandra (supra) is to be observed by the unit holder. It casts duty on the unit holder if he is willing to offer the said price, then he has to avail of the same facility granted by the Court. It is admitted position that the petitioner was present at the time of opening of the bid, but he has not offered any sale price. In the absence thereof, there is no question of reschedulement of arrears, more particularly when he did not offer any price and in past, he failed to make the payment on account of reschedulement or twice one time settlement.

##. Clause 4(b) of para 22 of the aforesaid judgment refers to bringing third parties with higher offer which

should be tested and then to be accepted. The GSFC has committed no breach of the conditions. It was for the petitioner to see that at the relevant time, there is an offerer with a valid offer and amount in hands. Even before us, we granted time to the petitioner to test the genuineness of the offer, but the petitioner failed miserably and therefore it cannot be said that even the GSFC has committed any error.

##. Clause 5 of para 22 of the aforesaid judgment would not be applicable in the instant case as there is no question of sale by private negotiations. So far as Clause 6 is concerned, it is required to be again reproduced.

> "(6) Request of the unit holder to release any part of the property on which the concern is not standing of which he is the owner should normally be granted on condition that sale proceeds shall be deposited in loan account."

In the instant case, it is one plot whereon hotel building is erected. Before the Apex Court, one M/s. Shiv Rice Mill was the owner of two plots bearing nos. 208 and 220/2 which were purchased under a single sale deed. The properties were thus separate from the inception. Plot no. 220/2 remained vacant and was not even valued in assessment of the partnership firm which hypothecated the rice mill to the U.P.Financial Corporation for loan which was sanctioned in 1972. It appears that in view of the failure for making arrangements, the Corporation was requested to release plot no. 220 so as to enable the appellant to negotiate for private sale along with its two more plots to pay off the debt. In the peculiar facts of that case, the Apex Court pointed out as to how one is permitted to sell the property to repay the amount of loan to the State Financial Corporation. In the instant case, it is not the case of two separate properties, but it is the case of only one property namely a hotel and the Court itself cannot exercise the power of auctioneer to find out the better buyers by thinking that if property is sold in piece meal it would fatch more price. It is also required to be noted that if the property is required to be bifurcated, Mr. A.J. Patel, learned counsel submitted that his client would not be interested in purchasing the property as he is interested in running the hotel. He further submitted that in the same way, if the property is to be sold, it is difficult to say that the property will fetch better price. One is not certain

what amount would be received by way of sale of one property after its division to different purchasers. It is required to be noted that the Financial Corporation being in the business, it is well aware as to how it should arrange its own business and how to auction the property. It must be left to the Financial Corporation to judge it and to auction the property. The Court cannot substitute the decision of the Financial Corporation while selling the properties. The Court, at the most, if comes to a conclusion that there is arbitrariness or some illegalities, can set aside the transaction in question, but the Court certainly cannot give direction to auction the property in particular manner only, particularly by selling the property in piecemeal.

##. The learned Single Judge in para 15 directed as under.

> "It is open to the petitioner to pay the entire liability and have the hypothecation redeemed as per the contract. If it is not possible, the respondents Corporations may initiate the sale of restaurant situated in the mezzanine floor and if by the sale proceeds of the restaurant at the mezzanine floor can satisfy the outstanding dues of the respondents Corporations, then they shall release the remaining property of the petitioner. If the sale proceeds falls short of the outstanding dues, the respondents Corporations may give six months time to the petitioner to pay the outstanding dues. If the petitioner fails to pay the entire outstanding dues to the respondents Corporations, then the Corporations may proceed with the sale of the property of the petitioner in the open auction after giving wide publicity in the press."

As per order, possession is to be handed over to the petitioner and it is open for the petitioner to pay the entire liability. When despite several opportunities, the petitioner was unable to pay the amount of cheques, there is no question that he will be able to pay the amount. Learned Single Judge held that if he is not able to pay, the Corporation may auction mezzanine floor. Without any material on record about the division of one property is feasible and as to what price would fetch, the direction could not have been given. Learned Single Judge has then proceeded to say that six months' time be given to repay the remaining amount. Hotel is closed since long and it would take pretty long time in

renovation. Nothing is on record that within what period one would be able to renovate? Whether, without mezzanine floor, looking to the nature of the business and construction of the building, one would be able to run the business of Hotel is not answered and yet the Court proceeded on assumption. Again after six months for huge amount, remaining part of the building is to be auctioned. In our opinion, it is not open to the Court to issue direction to the Corporation to auction the property by dividing the property at different timings. The Court was merely required to see that procedure followed in auction is fair or reasonable or not. The Court was not required to sit in appeal over the decision of a Committee and to issue direction for auction as indicated above.

##. In view of what is stated hereinabove, the learned Single Judge has committed an error in sitting in appeal over the decision of the financial institutions. In the facts and circumstances of the present case which we have indicated hereinabove, the learned Single Judge should not have interfered. When the petitioner has miserably failed and neglected to make the payment despite reschedulement and twice one time settlement, the GSFC must be permitted to act in accordance with law.

##. It is also required to be noted that the Apex Court in the case of A.P. State Financial Corporation v. M/s.Gar Re-Rolling Mills and anr. [(1994) 2 SCC 647] pointed out as under.

> "There is no equity in favour of a defaulting party which may justify interference by the Courts in exercise of its equitable extraordinary jurisdiction under Article 226 of the Constitution to assist it in not repaying its debts. The aim of equity is to promote honesty and not to frustrate the legitimate rights of the Corporation which after advancing the loan takes steps to recover its dues from the defaulting party. A Court of equity, when exercising its equitable jurisdiction under Article 226 must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law. ..."

##. It is required to be noted that if the Corporation acts in violation of any statute or acts unreasonably,

the Court's interference is called for. However, as indicated earlier in detail that the GSFC has taken care to safeguard not only the interest of the GSFC itself but also the interest of the loanee i.e. the petitioner and therefore, it cannot be said that there is non-compliance of the provisions of the Act or the guidelines laid down by the Apex Court.From the facts which are indicated hereinabove,it is clear that the persistent defaults were committed by the petitioner.In our opinion therefore, it would amount to abuse of process of law by invoking Court's jurisdiction under Article 226 of the Constitution. The Corporation should be permitted to act in accordance with Section 29 of the Gujarat State Financial Corporations Act, 1951 unless the Court comes to a definite conclusion that the Corporation is acting in violation of principles of natural justice and in violation of the norms indicated by the Apex Court in the case of Mahesh Chandra (supra). In the instant case, we find that the GSFC has not acted unreasonably but on the contrary, it is the petitioner who has shown lack of bonafides. In the instant case, we find that despite the promises, reschedulement and twice one time settlement granted by the GSFC, the petitioner failed and neglected to make the payment. Not only that, but the cheques given by the petitioner were dishonoured. That itself is sufficient to indicate that the petitioner is interested in delaying the proceedings. When it is found that there is persistent default, in the absence of genuine offer, we are of the view that the Court should not interfere. The Division Bench of this Court in the case of Amrit Dye Chem Industries vs. Bonanza Drugs and Chemicals Ltd. & anr. [1999 (1) GLH 719] had an occasion to consider various decisions on the subject matter. The same judgment was cited before us. After going through the judgment and the facts of this case, we are of the view that the GSFC has committed no illegality, irregularity or breach of guidelines laid down in the case of Mahesh Chandra (supra) while accepting the offer and therefore, these appeals are required to be allowed with costs.

##. On behalf of the respondent nos. 1 and 2, the learned advocate urged that these respondents have invested huge amount. On behalf of the GSFC it was submitted that huge amount is in arrears and the GSFC is not in a position to recover anything. When the GSFC fortunately got the buyer and it is because of the action initiated by the petitioner, the GSFC is not in a position to collect the amount from the buyer. The buyer also complained that he is not in a position to run the hotel and the amount invested is without any return. It is also submitted before us that in view of the

proceedings, these matters have remained standstill and has served purpose of none. The GSFC is suffering loss of interest which comes to lacs of rupees. The bidder is also suffering huge loss and therefore, this is a fit case wherein, according to counsel for the appellants, costs of Rs. 1.00 lac must be awarded to each of the appellant. However, we are of the view that ends of justice would be met if costs of Rs. 50,000/= are awarded to each of the appellant with a direction to contesting respondents to pay within a period of 4 weeks. The respondent nos. 1 and 2 shall deposit the amount of costs within a period of 4 weeks. Judgment impugned is quashed and set aside. The appeals are allowed. Civil Application No. 12343 of 2001 stands disposed of. Notice is discharged.

[B.C. PATEL, J.] [JAYANT PATEL, J.]

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